IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

WA.No. 1057 of 2006(A)

AGAINST THE JUDGEMENT/ORDER IN WPC.35401/2005
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APPELLANT: PETITIONER IN WP:
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1. VISHNU RAM, S/O. BHASKARAN NAIR,
FLAT NO.210, BLOCK NO.3, PANAMPILLY APARTMENTS
PANAMPILLY NAGAR, KOCHI-36.

2. LATHA VISHNU RAM, W/O. VISHNU RAM,
OF DO. DO.

BY ADV. SRI.T.K.VENUGOPALAN

RESPONDENTS:

THE CHIEF MANAGER AND AUTHORISED
OFFICER, THE DHANALAKSHMI BANK LTD.,
ZONAL OFFICE, MARINE DRIVE,
ERNAKULAM.

BY ADV. SRI.C.K.KARUNAKARAN, SC

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 21/12/2006, THE COURT ON 23/01/2007 DELIVERED THE FOLLOWING:

V.K.BALI, C.J. &
C.N.RAMACHANDRAN NAIR , J.

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W.A. No.1057 of 2006

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Dated this the 23rd day of January, 2007.

JUDGMENT

Ramachandran Nair,J.

The appellants were petitioners in the W.P. which was filed challenging securitisation proceedings initiated by the respondent-Bank by issuing notice under Section 13(2) of the Securitisation and Reconstruction of Financial assets and Enforcement of Security Interest Act, 2002 (hereinafter called "the Act"). The learned Single Judge refused to entertain the writ petition on the ground that petitioner has alternate remedy by way of appeal to the Debt Recovery Tribunal under Section 17 of the Act. It is against this judgment of the learned Single Judge the appellants have filed this Writ Appeal.

2. We have heard counsel appearing for the appellants and Standing Counsel appearing for the respondent-Bank. We are unable to uphold the

view taken by the learned Single Judge because the question raised has a direct bearing to the jurisdiction of the respondent-Bank to initiate securitisation proceedings under the Act. The contention raised by the appellants is that the provisions of the Act are not applicable by virtue of Section 31(i) of the Act because the security interest created is in respect of agricultural land. When the maintainability of proceedings under the Act itself is questioned, it is the duty of this court to examine whether the Act confers jurisdiction on the Bank to initiate proceedings under the Act. It is a settled position that if the impugned proceeding is beyond jurisdiction of the authority which initiates it, the aggrieved party is entitled to maintain W.P. under Article 226 of the Constitution of India to challenge the same. It is admitted that the loan was advanced against security of one acre fifty cents of rubber plantation which was admittedly agricultural land. The case of the Bank is that the rubber trees have been cut down and therefore, the land has lost it's character as agricultural land. Counsel for the appellants on the other hand contended that the trees are cut only because they have

become old and unyielding and the next step is to replant the land again with rubber trees. Even if the land is kept idle for sometime, the same does not cease to be agricultural land is the contention of the appellants. We are inclined to accept this contention because land was admittedly used for agricultural operations and is still fit for replanting. Unless the appellants give up agricultural operations and use it for some other purpose, the land should be treated as agricultural land only. Since the records show that security interest is created in agricultural land, the prohibition under Section 31(1) applies and therefore, securitisation provisions of the Act are not applicable. Moreover, it is on record that the Bank has filed suit and obtained exparte decree, even though such decree is now set aside and suit is again taken for trial before the Sub Court, Pathanamthitta. We therefore, feel that the Bank cannot initiate recovery proceedings as long as the character of the land remains agricultural. However, if the agricultural operations are abandoned for an appreciable period or if the land is converted for any other purpose, then it is open to the Bank to initiate

proceedings afresh as and when the same happens. However, the Bank is free to pursue the suit before the Sub Court. Having regard to the fact that the suit was once decreed exparte nearly six years back, we direct the Sub Court, Pathanamthitta to take up the Suit out of turn and dispose of the same (O.S. No.137/2000) within a period of three months from the date of production of copy of this judgment by the Bank. The Writ Appeal is accordingly allowed vacating the judgment of the learned Single Judge and disposing of the Writ Petition by quashing the impugned proceedings initiated under Section 13(2) of the Act, but leaving freedom to the Bank to proceed based on observations above.

V.K.BALI
Chief Justice

C.N.RAMACHANDRAN NAIR
Judge

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